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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-
 defendant

v.

APPLE INC.,

Defendant,
 Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**NOTICE OF FILING OF DEFENDANT
 APPLE INC.'S DEPOSITION
 DESIGNATIONS PURSUANT TO TRIAL
 ORDER NO. 2**

1 PLEASE TAKE NOTICE that Apple Inc. hereby files the following deposition designations
2 pursuant to Trial Order No. 2, which granted in part and denied in part Apple's motion to file portions
3 of the below deposition designations under seal:

- 4 1. Joe Kreiner
- 5 2. Haseeb Malik
- 6 3. Mark Rein

7 Dated: May 14, 2021

Respectfully submitted,

8 GIBSON, DUNN & CRUTCHER LLP

9
10 By: /s/ Rachel S. Brass
11 Rachel S. Brass

12 Attorney for Defendant Apple Inc.
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Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)

**Deposition Designation of Joe Kreiner
(February 5, 2021)**

Time

Apple Inc.'s Designations (Yellow Highlight)	Epic Games, Inc.'s Designations (Blue Highlight)
1 hour 13 minutes 25 seconds	5 minutes 44 seconds

DEFENDANT	United States District Court Northern District of California
	Case No. <u>4:20-cv-05640-YGR</u>
	Case Title <u>Epic Games, Inc. v. Apple, Inc.</u>
	Exhibit No. <u>Depo. 2</u>
	Date Entered _____
	Susan Y. Soong, Clerk •
By: _____	Deputy Clerk

HIGHLY CONFIDENTIAL

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

EPIC GAMES, INC.,
 Plaintiff,
 Counter-defendant,

vs.

Case No. 4:20-cv-05640
 YGR

APPLE INC.,
 Defendant,
 Counterclaimant.

IN RE APPLE IPHONE
 ANTITRUST LITIGATION

Case No. 4:11-cv-06714
 YGR

(caption cont'd)

DEFENDANT	United States District Court Northern District of California	
	Case No.	4:20-cv-05640-YGR
	Case Title	<u>Epic Games, Inc. v. Apple, Inc.</u>
	Exhibit No.	Depo. 2
	Date Entered	
By: Susan Y. Soong, Clerk		Deputy Clerk

1 DONALD R. CAMERON, et al.,

2 Plaintiffs,

3 vs.

Case No. 4:19-cv-03074

YGR

4 APPLE INC.,

5 Defendant.

6
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9 **HIGHLY CONFIDENTIAL**

10 ZOOM DEPOSITION OF JOE KREINER & EPIC GAMES, INC'S

11 30(b)(6) CORPORATE REPRESENTATIVE

12 (Reported Remotely via Video & Web Videoconference)

13 Raleigh, North Carolina (Deponent's location)

14 Friday, February 5, 2021

15 Volume I

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19
20 STENOGRAPHICALLY REPORTED BY:

21 REBECCA L. ROMANO, RPR, CSR, CCR

California CSR No. 12546

22 Nevada CCR No. 827

Oregon CSR No. 20-0466

23 Washington CCR No. 3491

24 JOB NO. 4450721

25 PAGES 1 - 297

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17 THE COURT REPORTER: If you could raise

18 your right hand for me, please.

19 THE DEPONENT: (Complies.)

20 THE COURT REPORTER: You do solemnly 12:22:22

21 state, under penalty of perjury, that the testimony

22 you are about to give in this deposition shall be

23 the truth, the whole truth and nothing but the

24 truth?

25 THE DEPONENT: I do. 12:22:22

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EXAMINATION

BY MR. SRINIVASAN:

Q. Good morning, Mr. Kreiner. For the 09:21:26
record, can you state your full name and spell --
spell it for us, please.

A. Sure. It's Joseph Kreiner. My last name
is spelled K-R-E-I-N-E-R.

HIGHLY CONFIDENTIAL

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23 Did you join Epic in 2011?

24 A. Yes.

25 Q. Okay. And can you kind of briefly give 09:25:40

Page 23

HIGHLY CONFIDENTIAL

1 us an overview of what you did when you started at 09:25:43
2 Epic, what roles you had, and building up to the
3 role you currently have?

4 A. Sure. I joined Epic in 2011 as business
5 development for Unreal Engine. Over time my 09:25:55
6 current role is vice president of business develop.
7 That includes business development for the
8 Epic Games Store, business development for Epic
9 Online Services, and managing first-party relations
10 with Sony, Microsoft, and Nintendo. 09:26:15

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(Exhibit 0068 was marked for

identification by the court reporter and is

attached hereto.)

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Q. Okay. And, Mr. Kreiner, we can -- I'm
just going to ask you a question. And if you need
to look at it more -- the document more, you can do
that. 09:31:58

Have you seen this document before?

A. I don't believe so.

Q. Okay. So this is a notice that Apple
served on your company, Epic, asking for testimony
on behalf of the company on several topics. So I'm
just going to ask you about a subset of these.
There are 40 topics -- 43 topics, actually. And
you're -- through your counsel, we understood that
there are about a half dozen that you are -- have
been designated for. 09:32:09
09:32:32

So maybe -- let me just direct you to the
ones that are relevant to you, and you can let me
know that you're ready -- hopefully, that you are
prepared to testify about them. 09:32:46

1 So if you can turn to page 6, the first 09:32:48

2 number on page 6 is 8. And I'll just read that.

3 "Distribution (whether online, through

4 brick-and-mortar stores, or through online stores

5 such as Amazon.com) of each of your apps, web apps, 09:33:05

6 in-app products, and software, the commissions,

7 fees, costs, and expenses paid in connection with

8 each such distribution channel, and the margins and

9 net profits received by you relative to prices

10 charged." 09:33:22

11 We understood, Mr. Kreiner, that you

12 would be testifying on this topic with respect to

13 consoles and gift cards. Are you prepared to do

14 that?

15 A. Yes. 09:33:33

16 Q. Okay. And then No. 10 -- I'm just going

17 to cover all of them so we can take care of this at

18 once.

19 Topic No. 10 -- rather than read it out

20 loud, maybe for the sake of efficiency here, if you 09:33:43

21 take a look at No. 10, are you prepared to testify

22 about No. 10?

23 A. Yes.

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Q. (By Mr. Srinivasan) So is that -- so
with that clarification in mind, Mr. Kreiner, are
you ready to testify about 10 through 13? 09:34:18

A. Yes.

Q. Okay. And if you can flip to or scroll
down to -- the next topic is on page 9, which is
Topic 28, which is "Agreements or contracts
relating to providing or directing your apps, web
apps, in-app products, software, or app
marketplace, including any relating to distribution
on an exclusive basis." 09:34:36

And, again, I understand that you were
designated for this topic with respect to consoles? 09:34:53

A. Yes.

Q. And then if you can scroll to the next
one, No. 32, Topic 32, again restricted to
consoles. Is that something you're ready to 09:35:10

1 testify about? 09:35:12

2 A. Yes.

3 Q. And one last one on the next page,

4 Topic 40, Epic's "effort to bundle its digital

5 products, app, web apps, software, in-app products 09:35:26

6 with any hardware devices," is that something that

7 you are ready to -- to testify about today?

8 A. Yes. That's correct.

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Q. (By Mr. Srinivasan) So, Mr. Kreiner,
take a look at Exhibit 71 if you would. And let me
know when you've had a chance to skim it.

For the record, Exhibit 71 was produced 09:38:35
by Epic bearing Bates number 1983020 through
1983026. It is a document dated May 31st, 2017,
with the title "Exclusivity and Comarketing
Agreement for 'Fortnite' on PlayStation 4."

Mr. Kreiner, this is a letter agreement 09:39:05
addressed to you.

Do you recall this agreement?

A. Yes.

MR. CLARKE: Jay, can I just clarify. I
think this is Exhibit 69. You might have misspoken 09:39:13
and said 71.

MR. SRINIVASAN: Okay. Thank you for
that. Yes, it is Exhibit 69. And thanks for that
clarification.

Q. (By Mr. Srinivasan) And so, Mr. Kreiner, 09:39:23

HIGHLY CONFIDENTIAL

1 was this an agreement between Epic and Sony 09:39:25

2 regarding distribution of Fortnite on

3 PlayStation 4?

4 A. That's correct.

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Q. (By Mr. Srinivasan) Okay. And in

09:45:25

HIGHLY CONFIDENTIAL

1 looking at Section 2.3 here, though, when they do 09:45:27

2 say -- you know, it's in -- it's in the page with

3 the number that ends in 22. The provision says,

4 quote/unquote -- well, sorry. [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 And so I guess I'll just ask you just

10 about that quote I just read specifically. What 09:46:05

11 did that mean in terms of Epic's obligation?

12 A. The intent there was to have the cost of

13 digital goods and Fortnite to be equivalent across

14 [REDACTED]

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(Exhibit 0070 was marked for

identification by the court reporter and is

attached hereto.)

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Q. Terrific. And for the record, while you
review it, Exhibit 70 is a letter agreement dated 09:49:49
March 15th, 2018, with the title "Amendment #1 to
the Exclusivity and Co-Marketing Agreement for
'Fortnite' on PlayStation 4."

Mr. Kreiner, do you recall this
agreement? 09:50:10

A. Yes.

Q. Okay. And I want to take you to 2.3.3,
which is the one that says "Reporting." And is it 09:50:44

HIGHLY CONFIDENTIAL

1 your understanding that this provision requires 09:50:54

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5 [REDACTED] [REDACTED] [REDACTED]

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THE DEPONENT: It was my general

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understanding that, yes, those players would spend

09:52:29

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more money.

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Q. (By Mr. Srinivasan) Okay. And if you

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can -- and turning back to Exhibit 70 here. If --

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if you look at 2.3.2, is -- is 2.3.2 -- what is

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your understanding of provision 2.3.2, which is

09:52:50

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HIGHLY CONFIDENTIAL

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13 (Exhibit 0071 was marked for
14 identification by the court reporter and is
15 attached hereto.) 09:53:47
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19 So Exhibit 71 for the record is another
20 letter agreement, this one dated September 18th, 09:54:13
21 2018, titled "Amendment #2 to the Exclusivity and
22 Co-Marketing Agreement for 'Fortnite' on
23 PlayStation 4."
24 Mr. Kreiner, again, this is a letter
25 agreement dated -- sorry -- addressed to you. 09:54:27

HIGHLY CONFIDENTIAL

1 Do you recall this agreement?

09:54:31

2 A. Yes.

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12 Q. Okay. Is your understanding that they
13 receive a 30 percent commission of whatever the
14 purchase is by the consumer on the Sony platform?

15 A. It is my understanding it's legally 10:05:31
16 defined as much more complicated than that, but in
17 general it is 30 percent.

18 Q. Okay. And this provision then coming
19 back to Section 3 of -- of Exhibit 71, this
20 addresses potentially additional compensation that 10:05:45
21 Sony might receive for distributing Fortnite; is
22 that correct?

23 A. Yes. In the context of a user who is
24 actively cross-playing and using cross-progression
25 and purchasing outside of the PlayStation 10:06:00

1 ecosystem, we were agreeing to compensate Sony. 10:06:04

2 Q. Okay. So in addition to the 30 percent
3 commission, Sony potentially could receive even
4 more compensation from Epic for distributing
5 Fortnite? 10:06:19

6 A. Correct.

7 Q. And it sounds like to me -- and let me
8 know if you can answer this question -- that there
9 was a set of conditions that had to occur in order
10 for this additional compensation to trigger. Is 10:06:27
11 that fair?

12 A. That's -- yes, that's fair.

13 Q. And can you describe generally how this
14 worked? what does conditions were?

15 A. It was a fairly complicated calculation, 10:06:39
16 but the net effect was, if a primary PlayStation
17 user shifted their purchasing activity to another
18 platform, we would compensate PlayStation for --
19 for that.

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23 Q. Okay. And do you have an understanding
24 of how frequently that occurred?

25 A. I believe we were required to pay this 10:07:14

HIGHLY CONFIDENTIAL

1 quarterly, and if I remember correctly, it happened 10:07:17

2 maybe three or four times.

3 Q. Okay. Three or four times since the

4 inception of this agreement in -- I should say

5 three or four quarters since the inception of this 10:07:29

6 agreement in September 2018?

7 A. Yes. Subsequent agreements loosened the

8 payment responsibilities and, my understanding,

9 ceased to pay Sony at some point.

10 Q. Okay. And do you know how much that 10:07:46

11 additional compensation was at -- at any of those

12 quarters?

13 A. Yeah. It was relatively small. Maybe a

14 million to 3 or 4 million per quarter.

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(Exhibit 0072 was marked for
identification by the court reporter and is
attached hereto.)

Q. (By Mr. Srinivasan) So, for the record,
Exhibit 72 is a PowerPoint deck titled
"Cross-Platform Policy Requirements and Process," 10:09:43
August of 2019. And this -- Mr. Kreiner, I'll just
represent that this came from your files.
And so, first of all, do you -- do you
recognize this deck?

A. I remember receiving it, yeah. 10:10:02

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(Exhibit 0073 was marked for
identification by the court reporter and is
attached hereto.)

MR. SRINIVASAN: And for the record, 10:13:25
while you review that, Mr. Kreiner, Exhibit 73 is
a -- an agreement that is titled "PlayStation 4
Cross-Platform Policy Schedule to the PlayStation
Global Developer and Publisher Agreement."

And it bears Bates number ending in 141, 10:13:44
goes through Bates number ending in 149, and is
signed by Joe Babcock for Epic and Phillip
Rosenberg for Sony.

Q. (By Mr. Srinivasan) Mr. Kreiner, do you
recall this agreement? 10:14:07

A. Yes.

Q. Okay. And what is your understanding of
what this agreement -- the -- what is your
understanding of the purpose of this agreement?

A. Yeah, this agreement is Sony PlayStation 10:14:19

1 refining the requirements around supporting 10:14:23
2 cross-play. And, you know, cross-play was a new --
3 a new feature. And those previous letters were
4 kind of the first of its kind for Sony. This is a
5 more formal agreement that's meant to go out to a 10:14:40
6 wider developer base than just Epic.

7 Q. Got it.

8 And do you recall when this agreement was
9 executed?

10 A. Offhand, no. 10:15:08

11 Q. I'm sorry. I'll just direct you to it.

12 It says in the third line there that it's effective
13 as of September 2019.

14 Does that roughly comport with your
15 understanding? 10:15:18

16 A. Yes.

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Q. Okay. And then if we could go to
Section 6, which is titled "Product Submission and
Technical Requirements," that very first sentence
says, "Prior to making any cross-platform features
available on PS4, publishers will submit a written
request to enable cross-platform features within a
licensed product to SIE group companies for
approval via DevNet in order for SIE group

1 companies to ensure the licensed product complies
2 with the technical requirements set forth in
3 Exhibit 1."

4 Did I read that right, sir?

5 A. Yes. This is a requirement from the 10:18:44
6 previous PowerPoint, yeah.

7 Q. And this requirement essentially requires
8 Epic to first receive permission from Sony before
9 enabling some new aspect of cross-platform play; is
10 that right? 10:19:01

11 A. Yes.

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Q. Okay. And do you know why Xbox wasn't included in the original agreement that authorized cross-platform play with a PC?

10:19:54

A. Sony was very concerned about giving Xbox a competitive edge by allowing it.

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19 Q. (By Mr. Srinivasan) Okay. Great. Let's

20 look at the next exhibit, which will be 74. 10:22:07

21 (Exhibit 0074 was marked for

22 identification by the court reporter and is

23 attached hereto.)

24 Q. (By Mr. Srinivasan) I don't think it's

25 up yet. Okay. 74 should be up. 10:22:26

1 And while you're taking a look at that, 10:22:33

2 Mr. Kreiner, for the record, Exhibit 74 is an

3 agreement entitled "PlayStation Global Developer &

4 Publisher Agreement." And it spans several pages

5 that starts with Bates number ending in 810 and 10:22:56

6 going through Bates number ending in 856.

7 And, Mr. Kreiner, do you recall seeing

8 this agreement before?

9 A. Yes, I've seen this before.

10 Q. And is this agreement which -- is it okay 10:23:19

11 if I call this the -- the -- well, it's the global

12 developer and publisher agreement. Is that how you

13 refer to it as?

14 A. Yes, abbreviated as the GDPA.

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Do these agreements cover just Fortnite,

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or do they cover all digital products distributed

10:48:55

Page 74

1 by Epic on the PlayStation? 10:48:59

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3 THE DEPONENT: The GDPA is a generic
4 document that would cover all submitted games by
5 Epic. The letters that we've been looking at were 10:49:11
6 specific to Fortnite.

7 Q. (By Mr. Srinivasan) Okay. Thank you.

8 And let's focus on -- let's focus on
9 Fortnite. So if I understand it correctly, Epic is
10 paying a 30 percent commission, sometimes maybe a 10:49:26
11 little bit more, to distribute Fortnite on
12 PlayStation. Is that accurate?

13 A. That would be accurate, yes.

14 Q. Okay. And that Epic is subject to
15 complying with Sony's guidelines under the GDPA to 10:49:42
16 be able to distribute its products on PlayStation.
17 Is that accurate?

18 A. Yes.

19 Q. Okay. And that Epic is required to
20 distribute its products through the PSN, the 10:49:58
21 PlayStation Network, to reach Sony's users on
22 PlayStation. Is that accurate?

23 A. Yes.

24 Q. And I didn't ask you this question
25 before, but does Epic have an opportunity to recoup 10:50:15

HIGHLY CONFIDENTIAL

1 payment for its products on the PlayStation Network 10:50:19

2 through its own means, or is it required to do it

3 through Sony?

4 A. We use the Sony-provided payment flow.

5 Q. Okay. And is Epic required to use the 10:50:32

6 Sony-provided payment flow to distribute its

7 products on PlayStation?

8 A. That's my understanding.

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6 Q. (By Mr. Srinivasan) Okay. And are you
7 required -- is Epic required to provide certain
8 in-game content that's not available to other
9 platforms?

10 THE DEPONENT: That's correct. We 10:52:12
11 provide quarterly in-game drops that are available
12 to PS Plus members.

13 Q. (By Mr. Srinivasan) And PS Plus members,
14 only, correct?

15 A. Correct. 10:52:23

16 Q. And then as far as cross-platform play,
17 to the extent that Epic would like to broaden that
18 to additional platforms, you are required to get
19 Sony's permission to do so, correct?

20 A. Via DevNet, correct. 10:52:36

21 Q. What does that mean, via DevNet? if you
22 can explain that, please.

23 A. Sony has a support forum that's available
24 to anyone that is a publisher on the PlayStation
25 platform. It's a forum they use to respond to 10:52:51

1 support questions. 10:52:54

2 Q. Okay. And then as far as pricing, Sony
3 requires Epic to price Fortnite, any content
4 associated with Fortnite, at a price no higher than
5 that what it's pricing at other platforms, correct? 10:53:06

6 A. Correct.

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14 (Exhibit 0077 was marked for
15 identification by the court reporter and is 10:53:32
16 attached hereto.)

17 MR. SRINIVASAN: And while you take a
18 look at that, for the record Exhibit 77 is an
19 assignment and assumption agreement dated
20 June 28th, 2018. It is -- has the first page as 10:54:06
21 the Bates number ending in 632 and goes all the way
22 to the page with Bates number ending in 662.

23 Q. (By Mr. Srinivasan) Mr. Kreiner, do you
24 recognize this agreement?

25 A. I recognize the agreement that's attached 10:54:34

1 to Exhibit A.

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21 Q. (By Mr. Srinivasan) Okay. As you noted,

22 Mr. Kreiner, let's go to -- I guess it's the

23 Exhibit A to this agreement, which starts on page

24 number ending in 637. And this part of the

25 agreement, which is -- well, I'll say it for the

10:56:16

Page 79

HIGHLY CONFIDENTIAL

1 record. It's titled "Nintendo Switch Content 10:56:17

2 License and Distribution Agreement."

3 Do you recognize this agreement?

4 A. Yes.

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9 Q. And do you understand this agreement as

10 the one that governs Epic's distribution of its 10:56:41

11 games on the Nintendo Switch platform?

12 A. Yes.

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6 Q. Okay. Okay. So turning to the Exhibit A

7 agreement itself. If we can go to Section 3.6.

8 And 3.6 is entitled "Guidelines." And

9 I'll just quote that first sentence. It says,

10 "Content provider will ensure that the content and 10:58:34

11 marketing material comply with all the

12 guidelines -- with all the guidelines applicable to

13 the respective items."

14 Do you see that?

15 A. Yes. 10:58:51

16 Q. And do you understand that to mean that

17 Epic is required to comply with Nintendo's

18 guidelines to -- in order to abide by the

19 agreement?

20 A. Yes. 10:59:02

21 Q. Let's scroll down to 3.9. 3.9 is

22 entitled "Currency," and it says, "Content provider

23 will ensure that the content does not permit the

24 end user to obtain currency within the content,

25 including but not limited to, for the purpose of 10:59:21

1 gifting, exchange, redemption, transfer, use as a 10:59:25
2 premium, or purchasing anything whether within or
3 outside of the content for the Nintendo network."
4 Do you see that?
5 A. Yes. 10:59:38
6 Q. And do you know what that provision is --
7 is meant to address?
8 A. It essentially is making the wallet for
9 the Switch platform to be isolated from any other
10 platform. 10:59:57
11 Q. I see. So any V-Bucks bought on the
12 Nintendo platform would not be usable if the player
13 is using a different platform later? Is that fair?
14 A. Yeah, that's fair, but this also is a
15 little bit more broad. And, for instance, it 11:00:13
16 mentions gifting. And later Nintendo has given us
17 an exception to allow gifting inside of Fortnite.
18 And, additionally, we have permission
19 from them to have cross-progressions. So anything
20 purchased on the Nintendo Switch platform inside of 11:00:38
21 a user's account would transfer if they logged in
22 from another platform.
23 Q. Okay. And that's -- that's about, like,
24 if they buy a dance or an outfit, if they bought it
25 on a Nintendo platform and they were playing on a 11:00:52

1 different platform, they would have access to those 11:00:54

2 things; is that right?

3 A. Correct.

4 Q. But if they purchased a certain amount of

5 V-Bucks and had a V-Bucks balance on the Nintendo 11:01:01

6 platform and then played on a different platform,

7 that balance would not be accessible to them; is

8 that right?

9 A. In effect, yes.

10 Q. Okay. And that's still true today? 11:01:11

11 A. It is.

12 Q. So just so I understand it, the

13 cross-progression aspect is -- is allowed on

14 Nintendo, but the cross-wallet is not. Is that

15 correct? 11:01:24

16 A. That's correct.

17 Q. Okay. If we can look at 3.10, just below

18 there, and that says "Submission of the Content."

19 Is it your understanding that this

20 provision requires Epic to submit its content to 11:01:38

21 Nintendo in advance for approval?

22 A. Yes, in effect.

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13 Q. Yeah. So 657. And just to be clear for
14 the record, the top of the page is "Schedule 1:
15 Nintendo Shop Sale Schedule to Nintendo Switch 11:04:22
16 Content License and Distribution Agreement."
17 So specifically, Mr. Kreiner, it's that
18 first section there, 1.1 "Nintendo as Commission
19 Agent."
20 A. Uh-huh. 11:04:37
21 Q. And is it your understanding that this
22 provision appoints Nintendo as Epic sales
23 commission agent to perform the sale and
24 distribution of Epic's products to end users in the
25 Nintendo shop? 11:04:51

1 A. So rather lengthy paragraph, but that 11:04:53

2 appears to be correct.

3 Q. And so the idea here, then, is that Epic

4 sells its products on the Nintendo platform solely

5 through this means described in 1.1, correct? 11:05:06

6 A. Correct.

7 Q. If we then can go to Exhibit B to this

8 document which is on the page -- it's the very last

9 page of the document, actually, 662.

10 And right about a quarter of the way 11:05:29

11 down, there's a heading that says, "Exhibit B to

12 Schedule 1: Commission."

13 And I'll just read it. It says,

14 "30 percent of the amount Nintendo entity actually

15 received for each sale from end users, net of any 11:05:41

16 transaction taxes."

17 And is it your understanding that

18 Nintendo requires Epic to pay a commission of

19 30 percent of the amount received from each sale

20 from end users to Nintendo? 11:05:56

21 A. That's correct.

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Q. Okay. Great. And unlike Sony, you guys kept it simple with Nintendo. So this is the only Nintendo document.

Just so I understand it, Nintendo requires Epic to pay 30 percent commission on sales of its products, correct? 11:06:39

A. Correct.

Q. And Nintendo requires Epic to follow its guidelines and that its following its guidelines is a requirement for Epic to continue to distribute on Nintendo's platform, correct? 11:06:55

A. That's correct.

Q. And that Nintendo also requires Epic to go through Nintendo to -- to process the payment, correct? 11:07:08

A. Correct.

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(Exhibit 0078 was marked for
identification by the court reporter and is
attached hereto.) 11:07:43

Q. (By Mr. Srinivasan) So Exhibit 78 is up,
Mr. Kreiner, if you want to take a look at that. 11:08:20

A. Okay.
Q. Exhibit 78, for the record, is a document
entitled "Independent Developers Publishing Program
on Xbox One Title Licensing Agreement." 11:08:35

And it looks to be dated in May of 2017
between Microsoft and Epic Games, and it starts
with page -- Bates number ending in 372 and goes to
page with the Bates number ending in 383.

And, Mr. Kreiner, do you recognize this
document? 11:09:00

A. Yes.
Q. Okay. How would you describe -- what is
this document?

A. This is the distribution agreement for 11:09:09

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launching a product on the Microsoft Xbox.

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1 Q. Okay. And, as far as this agreement, is 11:11:29
2 it still in force? By "this," I mean the
3 Exhibit 78 we're looking at here.

4 A. Yes, that's my understanding.

5 Q. Okay. And is Epic distributing other 11:11:41
6 titles on Xbox One right now?

7 A. I don't believe so.

8 Q. Okay. Okay. So if we can go to
9 Section 2 of this agreement. It's titled "Game
10 Approval, Certification and Release." 11:11:59

11 And do you understand that Section 2
12 generally requires Epic to go through an approval
13 process for Microsoft before the game can be
14 distributed on the Xbox platform?

15 A. Yes, that's correct. 11:12:15

16 Q. And it looks like Epic must actually
17 receive a certification before it can distribute on
18 the Xbox platform?

19 A. That's correct.

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Q. Okay. And then if you scroll down a bit

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more to that 2.6 there, it says "Publisher Guide."

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And it says that "Microsoft has developed a guide

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containing ID@Xbox programwide requirements and

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information." And then it goes on to describe what

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those details are. And the last sentence says,

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"Each game must comply with the Publisher Guide."

14

And is it your understanding that -- that

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the Epic product has to comply with Microsoft

11:15:00

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Publisher Guide?

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A. Yes, that's my understanding, noting that

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the Publisher Guide changes and is a living

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document.

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Q. And you're required to comply with the

11:15:11

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guide as it changes, correct?

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A. Correct.

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23 Q. Okay. If you can look at 5.1 the "Sale
24 of In-Game Content," it says very simply, "You may
25 sell in-game content and you must use Microsoft's

1 commerce engine. All purchases made through your
2 game are subject to the terms of this TLA and the
3 Xbox Games Store policies."

4 Do you see that?

5 A. Yes. 11:17:07

6 Q. By that do you understand that Microsoft
7 requires Epic to use Microsoft's mechanism to sell
8 its -- any aspect of its content on the Xbox
9 platform?

10 A. That's correct. 11:17:18

11 Q. And then lastly, if we scroll down to
12 Section 8.1. And 8.1 is broadly titled "Royalty
13 Fee," and there's -- there's, you know, some
14 language in there.

15 But is the upshot of this that Microsoft 11:17:40
16 requires Epic to pay a 30 percent royalty -- or
17 30 percent commission for distributing its products
18 on the Xbox?

19 A. It's safe to summarize all of this as
20 that, yes. 11:17:53

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1 (Exhibit 0079 was marked for 11:18:05
2 identification by the court reporter and is
3 attached hereto.)

4 MR. SRINIVASAN: Okay. Sorry. It's
5 loading a little slower. 11:18:29

6 Q. (By Mr. Srinivasan) Exhibit 79 is a
7 document entitled "Independent Developers
8 Publishing Program on Xbox One, Title Licensing
9 Agreement, Amendment 1."

10 And, sir, do you recognize this document? 11:18:43

11 A. Yes.

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22 Q. Okay. And, again, just so I understand,
23 then, in terms of Epic's distribution of Fortnite
24 on the Xbox platform, Microsoft requires Epic to
25 undergo an approval process, correct? 11:19:33

1 A. Yes. 11:19:36

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13 Q. Okay. And that Microsoft reserves the
14 right to disable or remove any game or other
15 content of Epic's if Epic breaches the TLA or 11:20:23
16 otherwise deviates from the guidelines, correct?

17 A. And doesn't cure it, yes.

18 Q. Okay. And that to sell in-game content,
19 Microsoft requires Epic to use Microsoft's commerce
20 engine, correct? 11:20:42

21 A. That's correct.

22 Q. And I think I may have asked this at the
23 beginning -- and I apologize, but just in case --
24 that Microsoft requires Epic to pay a 30 percent
25 royalty or commission on all sales regarding its 11:20:50

1 games, right?

11:20:53

2 A. The legal language is a little bit more

3 complicated; but, yes, in fact, it is a 30 percent

4 royalty.

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(Exhibit 0081 was marked for

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identification by the court reporter and is

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attached hereto.)

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Q.

(By Mr. Srinivasan)

Okay.

81 is there.

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19 Q. Yeah. So you mentioned -- before we get

20 to GeForce Now, I'm just going to ask about one 11:33:22

21 other service, which is Microsoft's xCloud. Do

22 you know if -- if Fortnite is available through

23 that service?

24 A. It is not.

25 Q. Okay. And was that a decision -- a 11:33:32

Page 106

1 deliberate decision made by Epic not to offer it on 11:33:34

2 that service?

3 A. Yes.

4 Q. And what was the basis for that decision?

5 A. We viewed Microsoft's efforts with 11:33:44

6 xCloud to be competitive with our PC offerings.

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15 Q. And can you -- can you explain what you 11:34:16

16 mean when you say that the Microsoft xCloud

17 service competes with Epic's PC offering?

18 A. Yeah. So the way xCloud works is, when

19 you submit the Xbox version of a game to Microsoft,

20 if -- if you allow Microsoft to include your game 11:34:35

21 in the service, any -- any PC player would be able

22 to also play the game and only transact inside of

23 the Microsoft ecosystem.

24 So using Microsoft's commerce engine in

25 the game would be offering Fortnite playable on PC 11:34:55

1 but with Microsoft's in-game payment system. 11:34:58

2 Q. I see. So if they were playing on the
3 Microsoft -- if a user was playing on the Microsoft
4 xCloud service and to the extent that they made
5 any purchases, the -- Epic would have to pay a 11:35:08
6 30 percent commission on those to Microsoft?

7 A. Yeah. Well, Microsoft would withhold
8 that 30 percent, yes.

9 Q. Understood. Whereas if it was, of
10 course, played directly on the Epic Games via PC, 11:35:22
11 you're not paying a commission to anybody, right?

12 A. Correct.

13 Q. Okay. Now, you mentioned GeForce Now.
14 Can you describe what GeForce Now is?

15 A. Yes. It -- it operates as a cloud gaming 11:35:35
16 PC rental service. So a player subscribes to
17 GeForce Now. They get access to a high-end gaming
18 PC that exists in -- in a cloud environment, and
19 then can log into their existing digital
20 storefronts like -- like Steam or the Epic Games 11:35:59
21 Store.

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Q. And what GeForce Now -- by the way, do
you know who -- what company distributes GeForce
Now? 11:36:31

A. It's Nvidia.

Q. So Nvidia -- essentially, you would --
you would log in with your low-performance machine;
but, through the cloud, you would essentially be -- 11:36:43
you would have access to a high-performance machine
to play your games. Is that the idea?

A. Yes. That's my understanding.

Q. Okay. And I think you mentioned that
Fortnite is available on GeForce Now. Is that -- 11:36:56
did I get that right?

A. That's correct in that a user using that
service has access to their library of games on
multiple storefronts.

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2 Q. Okay. And did -- did you partner with
3 somebody to do the actual physical distribution?

4 A. Yes. We partnered with multiple
5 companies to do physical distribution.

11:43:02

6 Q. And what were the names of those
7 companies?

8 A. It would have been Gearbox for physical
9 Fortnite, and Warner Bros. for the more recent
10 physical offerings that are code in a box.

11:43:15

11 Q. Got it. And we'll break those apart. So
12 Gearbox was the only company that actually
13 distributed the game on disk for you?

14 A. That's correct.

15 Q. Okay. And did -- did you pay a
16 commission, or how else -- or did you otherwise
17 compensate Gearbox for that?

11:43:27

18 A. Yes.

19 Q. And what -- was it a commission?

20 A. Yes.

11:43:39

21 Q. And do you recall what that commission
22 amount was?

23 A. I don't remember the precise financial
24 calculation for that.

25 Q. Okay. Was it more than 30 percent? Do

11:43:49

1 you know? 11:43:53

2 A. Not directly to Gearbox, but if you would

3 include the entirety of the way physical

4 distribution occurs, it is money that goes to the

5 retailers. There's money that goes to distributors 11:44:06

6 such as Gearbox. And then the first parties also

7 get a cut. So the net effect, it would have been

8 more than 30 percent.

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12 Can you explain the process of physical

13 distribution and what the various parties in the

14 chain are?

15 A. Sure. So and -- and this is minorly -- 11:44:35

16 well, it's different per platform. But, in

17 general, the way this works is, for a physical

18 disk, the first party -- or in the case of the

19 Nintendo Switch, the cartridge -- the first party

20 requires those to be created at one of their 11:44:54

21 locations. And they typically take a fixed

22 per-disk fee that -- that is charged and collects,

23 at which then gearbox pays that fee in -- in this

24 particular case in -- on behalf of Epic and passes

25 the cost through to us. 11:45:18

1 And then Gearbox arranges with the -- the 11:45:20
2 retailers to purchase the disks at a wholesale
3 price. The retailers mark it up and make a profit
4 off of that.

5 Q. Okay. And is the way Epic is 11:45:33
6 compensated, is it related to the retail price
7 that's ultimately set by the retailer? Is there --
8 how does Epic get compensated for a physical
9 product?

10 A. It would be the wholesale price minus the 11:45:51
11 platform fee minus the Gearbox fee.

12 Q. Okay. And do you have a sense of what --
13 like an estimate of what the percentage would be
14 that Epic would receive compared to what the retail
15 price would be? 11:46:09

16 A. I'd have to look to -- to the financial
17 reporting that we received from Gearbox to -- to
18 give you an accurate estimation of -- of the --
19 what the actual net percentage was. But it's -- it
20 would be more than 30 percent. 11:46:26

21 Q. Okay. Meaning more than 30 percent that
22 Epic is giving to somebody else -- meaning you
23 would be getting less than 70 percent of the retail
24 value?

25 A. Correct. 11:46:41

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Q. Okay. And flipping back, then, to the
digital side of it, have you ever attempted to
negotiate a reduction in that 30 percent commission
that you are paying to the console folks?

12:04:25

A. No.

Q. So that's never been anything you've
engaged in at all?

12:04:40

A. I might have, you know, joked in passing
to -- to a member of -- of, you know, Sony,
Microsoft, or Nintendo that we would like it to be
less, but it was never pursued at any length.

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Q. Okay. And what is it that they do for
you that you feel like 30 percent is a fair number?

A. In particular those three platforms, we
have weekly marketing meetings with them to discuss 12:05:38
merchandising Fortnite in the best way possible.

We are a significant revenue generator
for all three of those platforms, probably in the
top five, you know, revenue sources for them. So
they have a vested interest in promoting Fortnite. 12:05:56

We receive significant store placement
that we do not have to pay for. We do pay for
some, but we receive significant free placement.

The marketing teams between Epic and the
first parties coordinates events and social media. 12:06:14

So we see that as an ongoing relationship
that is driving value for Epic.

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Q. Have you ever succeeded in negotiating an
exception to any of the -- of the requirement that 12:10:08
you have to go through the Microsoft commerce
engine?
A. No.
Q. Have you tried to do that?
A. No. 12:10:17
Q. Okay. Have you tried to negotiate around
the requirement that you have to go through
Microsoft to make your products available on the
Xbox?
A. No. But let me go back to the previous 12:10:27

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21 Q. So in terms of distributing on the

22 PlayStation itself, your games and Fortnite, have

23 you been able to negotiate around the requirement

24 that you have to distribute through the PSN?

25 A. No.

12:13:20

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1 Q. And have you been able to negotiate 12:13:21
2 around the requirement that the payment is
3 processed from Sony?
4 A. No, we've not engaged in those
5 conversations. 12:13:30
6 Q. Okay. Have you taken the position, by
7 the way, with Sony in these discussions that the
8 payment processing aspect of it is a separate
9 product?
10 A. Can you repeat the question. 12:13:42
11 Q. Yeah.
12 In -- in -- in thinking about the payment
13 processing function, for instance, that was
14 dictated in the Sony agreement, have you ever taken
15 the position with Sony that it's a separate product 12:13:51
16 to which Epic -- that Epic should not be required
17 to, quote/unquote, be subject to?
18
19 THE DEPONENT: It's not my understanding
20 that we have made. 12:14:02
21 Q. (By Mr. Srinivasan) Okay. What about
22 for Microsoft?
23 A. No.
24 Q. Or for Nintendo?
25 A. With Nintendo, there have been 12:14:10

HIGHLY CONFIDENTIAL

1 discussions about a direct Epic payment method, but 12:14:12
2 they're very early discussions and haven't really
3 gone anywhere.

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7 Q. Okay. And with Nintendo did you take the
8 position that requiring Epic to use the Nintendo
9 payment system was tantamount to requiring Epic to
10 take on a separate product? 12:14:34

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13 Q. (By Mr. Srinivasan) Yeah. Did you
14 describe payment processing as a separate product
15 that Nintendo was forcing you to buy? 12:14:42

16 A. No.

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So I want to go to Exhibit 80, and that

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was the one that was too small to read. So I think

01:07:28

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the -- there we go. It's going -- it's going to

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get shared on the screen. And so hopefully you can

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see it. It's still pretty small.

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And, Mr. Kreiner, have -- this relates to

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the issue of the -- the terms of the various

01:08:37

Page 139

1 agreements that Apple -- excuse me -- that Epic 01:08:40
2 has. And I know you're here just for the consoles.
3 So my question to you, sir, is, first of all, have
4 you seen this chart before?
5 A. Not at any length, no. 01:08:56
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10 Q. And right next to it there's a next 01:09:07
11 column right over that says "Platform Fee
12 Percentage."
13 Do you see that?
14 A. Yes.
15 Q. And would you agree with me that, for 01:09:15
16 Microsoft, Sony, and Nintendo, which are the first
17 three listed there, their -- the percentage is
18 30 percent?
19 A. That's correct.
20 Q. And that's consistent with what your 01:09:28
21 testimony was earlier this morning, correct?
22 A. That's correct.
23 Q. Okay. And, by the way, it goes on -- and
24 I should scroll down because there's a few more
25 games for -- listed also. That first three entries 01:09:42

1 were for Fortnite? 01:09:46

2 A. Uh-huh.

3 Q. There's then a separate entry for Rocket

4 League and "Third Party Publishing - Dauntless" and

5 Paragon and for -- you know, the 30 percent is 01:09:55

6 listed again for the console makers with respect to

7 all three of those games, correct?

8 A. That's correct.

9 Q. Okay. And my question also, if you see

10 that entire list of percentages, they're all 01:10:12

11 30 percent except for Gearbox Software is

12 40 percent and Samsung Electronics Co., Ltd., is

13 [REDACTED]

14 Focusing on the 40 percent Gearbox, is

15 Gearbox the entity that you identified as the 01:10:27

16 company that used to distribute your -- that used

17 to distribute Fortnite via disk?

18 A. That's correct.

19 Q. And -- and Gearbox is not the company

20 that's distributing the -- I think you called it 01:10:40

21 code in a box. They just did the disks, right?

22 A. Correct.

23 Q. Does this 40 percent number refresh your

24 recollection in any way as -- as to whether this

25 was the commission that you were -- that Epic was 01:10:52

1 paying Gearbox? 01:10:55

2 A. I would assume, if this document is from

3 Epic finance, that that's the correct number.

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8 MR. SRINIVASAN: And Exhibit 81, for the

9 record, while the technical folks blow this up, is

10 from the same document we just discussed, which is 01:11:46

11 Epic Bates Number 03848271, but it is a PDF of the

12 second tab on this Excel sheet which is financials.

13 Q. (By Mr. Srinivasan) And in -- and,

14 Mr. Kreiner, if you can see on Exhibit 81, there --

15 first of all, it's titled "Epic Games Non-GAAP 01:12:12

16 Consolidated Financials."

17 Do you see that?

18 A. Yes.

19 Q. And, again, this is something we

20 received. It's the same file that we just looked 01:12:20

21 at from Epic. You can see -- I just want to direct

22 you to the -- the -- the part that says "Fortnite."

23 And under it, it lists the three

24 consoles -- PS4, Xbox One, Switch -- then PC, and

25 then the two mobile platforms, iOS and Android. 01:12:37

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Do you see that?

01:12:43

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A.

Yes.

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HIGHLY CONFIDENTIAL

1 I think we -- you testified that the 01:19:32
2 revenue numbers for Apple in terms of 2018 in terms
3 of its relative share of overall revenue coming in
4 for Fortnite was about 6 to 7 percent.

5 Would you agree with that? 01:19:48

6 A. Yes, that's what you said, and I agreed
7 to it.

8 Q. And would you -- would you agree that
9 that percentage seems to carry forward for 2019 as
10 well? 01:20:00

11 A. I'm not doing the math in my head, but it
12 does appear that's the case.

13 Q. And same for 2020?

14 A. Yeah.

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20 But, on the other hand, you know, is 01:25:14

21 there any other way in which Epic has distributed

22 its products on the internet, you know, separate

23 and apart from a store like the Steam store or the

24 Epic Games Store?

25 A. Yes. We would sell our retail products 01:25:32

Page 153

HIGHLY CONFIDENTIAL

1 on retailer websites; so, you know, BestBuy.com, 01:25:34

2 Walmart.com, GameStop.com, Amazon.com.

3 Q. Okay. And so in those cases you're

4 talking about either the physical disk back when

5 you were selling physical disks or the -- the 01:25:48

6 code-in-a-box-type concept; is that right?

7 A. You're correct.

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1 (Exhibit 0083 was marked for 01:38:05
2 identification by the court reporter and is
3 attached hereto.)

4 MR. SRINIVASAN: So, Mr. Kreiner, I think
5 it's Exhibit 83 in the folder, when you get a 01:38:13
6 chance.

7 And while you're taking a look at that,
8 I'll just say for the record Exhibit 83 is an email
9 chain involving Mr. Kreiner, Danny Block, and
10 others at Epic from July of 2019, with the subject 01:38:27
11 line "Fortnite Card Economics." And the Bates
12 number ends on the first page 567, and it carries
13 over into a second page ending in 568.

14 Q. (By Mr. Srinivasan) So, Mr. Kreiner, I
15 don't know if -- have you had a chance to look at 01:38:46
16 this email?

17 A. Yes.

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17 Q. And the economics, then, are described

18 here, right, where he goes through the different

19 layers that take their various pieces of the cut.

20 And I think, if you roll it up to the top of the 01:40:00

21 email, you know, it's -- it's somewhere about --

22 looks like -- as you -- as Danny says there, looks

23 closer to 36.5 percent.

24 And -- and, again, is that sort of

25 consistent with the interrogatory response where 01:40:15

Page 165

1 you talked about Epic receiving 70 to -- 60 to 01:40:18

2 70 percent?

3 A. Yes.

4 Q. Okay. Okay. And so would you -- is it

5 fair to say that this email reflects sort of the 01:40:27

6 broad economics of how the gift card/POSA card

7 process works at Epic?

8 A. Yes.

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2 Q. Okay. And then how do you account for
3 those bundles? In other words, is it just the same
4 as the card that we just described, or is there a
5 different set of economics for that?

01:43:03

6 A. It's a different set of economics. So in
7 this case Microsoft, Sony, and Nintendo don't
8 charge Epic for generating those codes. Typically,
9 these bundles are done as a marketing exercise and
10 Epic's not compensated. There have been a few
11 instances where we are. So some of the early
12 console bundles that we did with Microsoft, they

01:43:20

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

01:43:37

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

01:43:50

21 Q. Can you get into why that's the case? In
22 other words, why were you getting compensated early
23 on and then aren't getting compensated anymore?
24 You know, one might think it would intuitively go
25 the other way. Is there -- is there a reason for

01:44:07

1 that? 01:44:10

2 A. I think our initial discussions with
3 Microsoft and Nintendo and Sony, all of those
4 parties are just used to paying for these kind of
5 bundles. They're coming from the more traditional 01:44:21
6 game development world where you're bundling the
7 game that someone pays up front for. And, you
8 know, even early on in Fortnite, you were buying
9 Save the World.

10 As the game progressed, it became more 01:44:36
11 about Battle Royale. It's a free-to-play game. So
12 we were more interested in being distributed to new
13 users. Someone's buying a console; they're a new
14 user in that ecosystem. You'd rather them get
15 exposed to Fortnite immediately. 01:44:54

16 So we just declined to pursue financial
17 gain, and the first parties were happy to oblige
18 us.

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Do you think Epic should pay less than
30 percent to the consoles as far as the
commission?

01:48:28

A. No. I feel like they generate
significant user acquisition and revenue for us,
that they're a primary venue for us to generate
revenue, and that they earn their 30 percent.

01:48:43

Q. And -- and so you're -- if I understand
it, you don't think it's -- you don't think they
should pay less because they are generating a big
volume. Is that -- you're sort of tying it to the
amount of the volume of revenue they bring in?

01:48:57

A. Certainly that. But also we have a very
good working relationship with those platforms.
They do a lot of networking and marketing on Epic's
behalf.

01:49:13

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11 Q. (By Mr. Srinivasan) Okay. And do you

12 understand that the 30 percent commission that

13 you're paying is actually just for payment

14 processing alone?

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16 THE DEPONENT: No, it's not. They do

17 quite a bit more than just process payments.

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22 Q. Okay. I think you mentioned earlier this

23 morning, you know, the -- the additional things

24 that they do. And I'm going to read some. I'm

25 just -- if I got this right, I try to write --

01:52:24

Page 175

1 write this down -- they had weekly meetings that 01:52:27
2 they were a significant revenue generator, that
3 they gave you store placement, that -- free store
4 placement in addition to what you were advertising,
5 marketing terms of -- around events and social 01:52:43
6 media. And -- and I think that's all I got.
7 First of all, was that an accurate list
8 of what you had said earlier?
9 A. Yes. They do more than that.
10 Q. Okay. And, please, what else do they do, 01:52:56
11 in your mind, to merit the 30 percent commission?
12 A. They have marketed Fortnite at physical
13 events, like PAX or, you know, trade shows. They
14 take out retail ads for -- for Fortnite on
15 occasion. Social media posts, focused blog posts 01:53:20
16 on Fortnite content. They retweet many of Epic's
17 social media posts surrounding content in Fortnite.
18 And we also get -- have done things like
19 dash callouts inside of PlayStation. When a user
20 logs in, they get notified Fortnite's got a new 01:53:45
21 content drop.

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Q. Okay. And you had testified earlier that all three consoles do not allow Epic to set up its own payment mechanism, correct?

THE DEPONENT: Correct.

Q. (By Mr. Srinivasan) I'm sorry. I didn't -- correct. Yeah.

01:54:40

So do you view that as being unfair in any way that they won't let you process your own payment -- they won't let Epic process its own payment?

A. No, I don't think that's unfair.

01:54:54

Q. So it's -- it's typically -- would you

01:55:08

1 agree that it's typically something that users 01:55:11
2 prefer, that they're able to deal with the console
3 on a global basis rather than having to enter their
4 information for every vendor?

5 A. I don't know about preferred, but it's 01:55:22
6 the standard practice.

7 Q. Okay. And do you -- do you agree that it
8 makes it easier for users to handle it that way?

9 A. Yes.

10 Q. Okay. What about the idea of having your 01:55:34
11 own direct distribution option on these platforms.
12 You testified earlier that the consoles won't allow
13 you, for instance, to distribute directly on them,
14 correct?

15 A. Correct. 01:55:55

16 Q. Do you -- do you view that as unfair that
17 they won't let you do that?

18 A. No.

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HIGHLY CONFIDENTIAL

1 said you can't price elsewhere lower than what you 01:56:29

2 price on -- on my platform, correct?

3 A. Yes. They impose significant

4 restrictions on us.

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19 Q. Sure. Do you -- you had said earlier

20 that each one of the three consoles mandates that 01:57:10

21 Epic provide, you know, basically best pricing

22 on -- on their respective consoles, correct?

23 A. Uh-huh. Yes.

24 Q. And, in other words, you're not -- Epic

25 is not free to price Fortnite differently on Xbox 01:57:22

Page 179

1 versus the PlayStation, correct? 01:57:27

2 A. That's correct.

3 Q. And do you view that restriction as
4 anticompetitive?

5 A. My personal opinion is it can be a little 01:57:36

6 anticompetitive; but given the way we operate

7 Fortnite on all seven platforms, it's a way to

8 prevent players from jumping around on platforms

9 and having a bad experience.

10 Q. How would they -- how would they have a 01:57:59

11 bad experience -- how would a player have a bad

12 experience if a certain platform, you know, priced

13 the digital products differently?

14 A. Well, you would see lots of arbitrage

15 between platforms. You'd have users, you know, 01:58:14

16 buying one to use on another. It causes a lot of

17 users logging in and logging out. It's the --

18 while -- while they would look like they're, you

19 know, potentially saving money, it's just a bad

20 experience. You would feel bad for somebody that 01:58:33

21 had purchased something on PlayStation and then see

22 that it's available for less money on Xbox.

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HIGHLY CONFIDENTIAL

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22 (Exhibit 0084 was marked for

23 identification by the court reporter and is

24 attached hereto.)

25 THE DEPONENT: Is that Exhibit 84?

02:09:54

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HIGHLY CONFIDENTIAL

1 Q. (By Mr. Srinivasan) Yeah, it'll be 02:09:55

2 Exhibit 84.

3 And so while you look at this,

4 Mr. Kreiner, Exhibit 84 is an email chain involving

5 Mr. Kreiner and others, including a Phil Rosenberg 02:10:16

6 at Sony. It is dated February -- the top email is

7 dated February 20th, 2018. It has the subject line

8 "Fortnite cross-play." And it's a Bates number

9 ending in 199.

10 So, Mr. Kreiner, do you recall this email 02:10:35

11 exchange?

12 A. Vaguely, sure.

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Q. Okay. But -- but -- is the overall gist 02:12:12
of this email part of your efforts to convince Sony
that cross-play would be beneficial to Sony?

A. Absolutely.

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(Exhibit 0088 was marked for
identification by the court reporter and is
attached hereto.)

Q. (By Mr. Srinivasan) So, Mr. Kreiner,
we'll get a new document up. While it's coming 02:42:37
up -- I don't know if it's up yet. It will be
Exhibit 88. But I don't know if it's populated
yet. I guess it has.

A. Yes, it has.

Q. Okay. Great. Let me introduce the 02:42:52
exhibit, and I'll ask you some questions about it.

Exhibit 88 is a one-page email chain with
the top email being from Mr. Kreiner to Danny Block
sent on September 12th, 2018, with the subject line
"Cross-wallet."

02:43:08

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21 Emu Servais wrote to you with -- with a

22 summary, it looks like, of a table that, at least

23 as of September 2018, gives the state of play for

24 cross-wallet and cross-play for the various

25 platforms.

02:44:53

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HIGHLY CONFIDENTIAL

1 Would you agree with that?

02:44:53

2 A. Yes.

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Q. And then the next one is PS4. And as of September 2018, there is no -- this reflects that there's no cross-wallet and there's cross-play but only with PCs, Macs, and mobile, correct? 02:46:05

A. That's what this indicates, yes.

Q. In this chart. And then you have Nintendo, which is no for cross-wallet but yes for cross-play. Is that consistent with your recollection? 02:46:48

A. Yes, that's correct. And that's still the case today.

HIGHLY CONFIDENTIAL

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(Exhibit 0090 was marked for

identification by the court reporter and is

attached hereto.)

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I want to direct your attention to the
bottom email. This is from -- so the email is on
the second page, and it bleeds into the third page.
It's the one from Mr. Silva to you on March 2nd,
2018. 02:57:20

Do you see that?

A. Yes.

Q. He says at the beginning of that email,
"Joe, As discussed in person, we are willing to
move forward with adding cross-play with mobile in
Fortnite with the following implanted in exchange,"
and then he describes in details. 02:57:27

Now, is this Mr. Kreiner part of the
requirements with Sony that, if you wanted to add
cross-play on new platforms, you had to get their
permission? 02:57:44

A. Yes.

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(Exhibit 0091 was marked for

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identification by the court reporter and is

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attached hereto.)

9

Q. (By Mr. Srinivasan) So, Mr. Kreiner, I

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think we have available now Exhibit 91. Exhibit 91 03:03:14

11

is a -- again, I think it's maybe a text exchange

12

between a Devin Winterbottom and yourself on

13

September 25th, 2018. And it's -- it's a single

14

page, and it's Bates number ending in 676.

15

So, Mr. Kreiner, first of all, is this a 03:03:41

16

text exchange, if you recognize this format?

17

A. I don't recognize this format; so I don't

18

know.

19

Q. Okay. Have you -- do you text as part of

20

your work functions ever? 03:03:53

21

A. On occasion.

22

Q. Okay. And is -- is Mr. Winterbottom

23

somebody who you work with?

24

A. Yes.

25

Q. Would it surprise you if you had texted 03:04:03

HIGHLY CONFIDENTIAL

1 him in the September 2018 time frame?

03:04:06

2 A. No, it would not.

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21 (Exhibit 0092 was marked for

22 identification by the court reporter and is

23 attached hereto.)

24 MR. SRINIVASAN: Okay. So the next

25 exhibit is Exhibit 92. And 92 is a two-page email 03:10:38

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1 chain, again mostly -- almost all the substances is 03:10:41
2 on page 1. The top email is from Joe Kreiner to
3 Ed Zobrist and some others at Epic Games sent on
4 April 24th, 2020, with the subject line "Your POV
5 on possible payment options." And the first page 03:11:01
6 ends with Bates number -- or ends with the Bates
7 number ending in 047.

8 Q. (By Mr. Srinivasan) Mr. Kreiner, do you
9 recall this email exchange?

10 A. Yes. 03:11:16

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12 Did -- is this a discussion of what

13 ultimately happened on mobile, where the direct

14 payment option dropped the price of V-Bucks

15 compared to what it used -- what it was before? 03:12:53

16 A. No. This is proposing charging -- or

17 providing 18 percent more V-Bucks if someone used

18 Epic payment services versus a lower price.

19 Q. Got it. So here the price would be the

20 same, but you would get 18 percent more V-Bucks for 03:13:13

21 that same dollar value; is that right?

22 A. Correct.

23 Q. Okay. And that's what was being

24 considered here. And you respond and say, "We did

25 agree to keep identical pricing across all 03:13:26

Page 227

1 platforms with Microsoft, Sony, and Nintendo." 03:13:31

2 And then -- but you say, "That being
3 said, all they care about is that we are not using
4 arbitrage to direct sales away from their
5 platform." And then you say, "They are entirely 03:13:41
6 self-serving; so making mobile less attractive
7 would likely work for them."

8 Do you know what you meant by that?

9 A. Yeah. I was giving Ed my interpretation
10 of what Sony, Microsoft, and Nintendo would -- 03:13:54
11 would say to us if we decided to implement this
12 strategy.

13 Q. And you're saying, though, initially that
14 they would be okay with something like this,
15 correct? 03:14:06

16 A. That's my supposition here. I'm not sure
17 if that actually would have been correct.

18 Q. Well, I mean, he then -- he then says, "I
19 think the idea is for the exact same purchase price
20 a mobile player would get 18 percent more V-Bucks 03:14:18
21 if they chose our payment system versus the Apple
22 or Google payment system." And to which you
23 respond, "Making it more advantageous to buy on
24 mobile than on console is not an option."

25 Do you see that? 03:14:32

HIGHLY CONFIDENTIAL

1 A. Yes. 03:14:33

2 Q. Is that your final sort of opinion on
3 this, that once you understood that this was -- a
4 way in which mobile pricing might give you more
5 value would not be okay with the consoles? 03:14:43

6 A. Yes, that was my opinion.

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] 03:14:59

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] 03:15:07

16 [REDACTED]
17 [REDACTED]

18 MR. CLARKE: Objection.

19 [REDACTED]
20 [REDACTED] 03:15:24

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Q. (By Mr. Srinivasan) You had -- did you
25 ever have a discussion with any of these console 03:15:44

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HIGHLY CONFIDENTIAL

1 folks about this idea, or this was just your --

03:15:46

2 your supposition?

3 A. This was just my supposition.

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21 Q. And, now, is that 12 percent commission

22 for payment processing alone?

23 A. No. That is for using the Epic Games

24 payment flow.

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Q. Well, I'm saying, you know, somebody
might ask you, you know, "Joe, you're charging me
12 percent on -- on every sale on your store.
What -- what are you charging me for? My payment
processing doesn't cost 12 percent. What are you
charging me for?"
A. Sure. The services we provide game
developers are CDN hosting, player support,
marketing of their games, and handling of refunds.
Q. Anything else?
A. I'm -- I mean, there's lots of technical
support. We also waive on Unreal Engine royalties
if the game is using Unreal Engine, which are
typically 5 percent. So there's a benefit to game
developers for shipping the games if they're using
Unreal Engine on the Epic Games Store.
Q. What else do you provide for developers?

03:32:28

03:32:41

03:33:02

03:33:25

1 Or is that a pretty compressive list? 03:33:27

2 A. No. We also have a supporter/creator

3 marketing program where currently Epic pays

4 influencers a 5 percent-of-sales fee if they

5 successfully refer a paying customer into our 03:33:39

6 ecosystem to go buy a game or in-app transactions.

7 And then we also do social -- you know

8 social media for game launches, video promotions.

9 We've done featuring at physical events, such as

10 E3. And we do sponsorships of the video games -- 03:34:03

11 the video games awards as well as other events

12 where we feature games that are available on the

13 Epic Games Store.

14 Q. So --

15 A. So significant marketing interaction. 03:34:21

16 Q. So the 12 percent is not limited to just

17 a payment processing fee?

18 A. Correct.

19 Q. And it sounds like it -- it's tied into

20 these broader ecosystem benefits that you provide 03:34:31

21 to your developers?

22 A. That's correct.

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2 Q. Okay. Is -- is the Epic Games Store
3 profitable at a 12 percent commission?

4 A. It's not profitable today because we're
5 in growth mode and focused on acquiring users. So 03:35:07
6 we're spending significant amounts of money
7 acquiring exclusive content and giving free games
8 away. So those -- those investment costs are
9 significant. I would expect, eventually, for us to
10 be able to turn a profit. 03:35:28

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(Exhibit 0095 was marked for

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identification by the court reporter and is

04:02:37

Page 252

1 attached hereto.) 04:02:37

2 MR. SRINIVASAN: This will be Exhibit 95.

3 THE DEPONENT: Okay.

4 MR. SRINIVASAN: Okay. Sorry. My

5 computer is little slower than yours. Go ahead and 04:03:06

6 take a look at Exhibit 95, Mr. Kreiner, and I'll

7 read it into the record, and then we can talk about

8 it.

9 Exhibit 95 is a PowerPoint deck titled

10 "Epic Games Store, Review of Performance and 04:03:24

11 Strategy, October 25th, 2019." It starts with

12 Bates number ending in 277 and goes through Bates

13 number ending in 297.

14 Q. (By Mr. Srinivasan) And the -- the --

15 the page that I'd like to direct your attention to, 04:03:48

16 Mr. Kreiner, it's numbered 17; it's Slide 17. And

17 the Bates number, the control number there at the

18 bottom, ends in 293.

19 A. Okay.

20 Q. And the title is "5 Year P&L and User 04:04:02

21 Forecast."

22 And, you know, I -- first of all, do you

23 recall this deck in particular?

24 A. Not in particular. This is a -- a common

25 format that we use on a recurring basis. 04:04:17

HIGHLY CONFIDENTIAL

1 Q. Okay. So this is the type of deck that 04:04:20

2 you would commonly receive?

3 A. Yeah.

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So current -- let's take a look at this model -- first of all, the document we're looking at from October of 2019 indicates that at the current business model at a 12 percent commission the -- the Epic Games Store was not projecting to make any money five years out under either model, correct?

04:06:57

A. Yes, although that's based on a pessimistic model of recouping minimum guarantees.

04:07:12

Q. Okay. And, currently, I think you testified already that the game -- that the game store, as it stands today in early 2021, is still not making money, correct?

04:07:29

A. That's my understanding.

Q. Okay. And in -- and if -- and is it your testimony, then, that there will be more current versions of this document at Epic that would show a -- a different story?

04:07:41

A. Yes.

HIGHLY CONFIDENTIAL

1 Q. Okay. What has changed about the 04:07:56
2 projections, to the extent that you know, to
3 suggest that, you know, that the picture is not
4 as -- is not what's portrayed here on this slide?

5 A. We have been more successful at 04:08:12
6 recovering our minimum guarantees with more recent
7 launches. We're much farther ahead in user
8 acquisition than these models assumed.

9 You know, in 2020 we had a very
10 significant user acquisition event in giving away 04:08:29
11 Grand Theft Auto V, and that reset a lot of the
12 expectations because we have many more people
13 coming to the store purchasing games.

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(Exhibit 0096 was marked for
identification by the court reporter and is
attached hereto.)

04:12:02

MR. SRINIVASAN: 96 is a email chain of
several pages. The top chain is from Scott Adams
at Epic Games to a number of folks, including
Mr. Kreiner. The top email is dated May 1st, 2019.
The subject line is "Fraud update for the week of
April 14th."

04:12:30

The first page has a Bates number ending
in 569, and it goes through -- the final page has a
Bates number ending in 577.

04:12:46

Q. (By Mr. Srinivasan) Mr. Kreiner, do
you -- first of all, have you had a chance to look
at this email?

A. Yes.

04:13:00

HIGHLY CONFIDENTIAL

1 Q. And do you recall this email chain from 04:13:07

2 when you received it?

3 A. Yes, I do.

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9 Q. And what was the issue here? Do you

10 recall? 04:13:37

11 A. Yes. In particular, this is related to

12 Ubisoft. And what was occurring -- yeah. What was

13 occurring was hackers had identified that, if you

14 purchased an Ubisoft game via the Epic Games Store,

15 The Division 2 and Anno 17 -- or 1800, in this 04:14:04

16 particular case, if you refunded it via our

17 automated refund system, Ubisoft was not

18 recognizing the refund.

19 So you could create a bunch of Epic

20 accounts, purchase the Ubisoft games, refund them, 04:14:23

21 and then hackers were selling the accounts in the

22 gray market as containing those games because

23 Ubisoft was not -- not removing the games from the

24 user's account in a timely fashion.

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HIGHLY CONFIDENTIAL

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(Exhibit 0097 was marked for

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identification by the court reporter and is

04:17:27

Page 263

1 attached hereto.) 04:17:27

2 MR. SRINIVASAN: This will be

3 Exhibit 99 -- or 97.

4 THE DEPONENT: I'm sorry. Are you

5 skipping exhibits or -- 04:17:51

6 Q. (By Mr. Srinivasan) No. I think I

7 just -- I screwed up the number. Yes, it's 97.

8 A. Okay.

9 Yes. I remember this email.

10 Q. Yeah. Okay. 04:18:01

11 MR. SRINIVASAN: So just for the record,

12 Exhibit 97 is a, you know, single-page email chain.

13 The top email is from Tim Sweeney to Joe Kreiner

14 and Steve Allison dated May 11th, 2019. Subject

15 "Apology - Epic Games Store woes." 04:18:17

16 Q. (By Mr. Srinivasan) And so, Mr. Kreiner,

17 you've anticipated my question. You do recall this

18 email, correct?

19 A. Yes.

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HIGHLY CONFIDENTIAL

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23 Q. (By Mr. Srinivasan) Do you recall that
24 the rate of fraud was surpassing 70 percent and
25 approaching 90 percent, first of all?

04:19:36

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Veritext Legal Solutions
866 299-5127

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19 (Exhibit 0098 was marked for
20 identification by the court reporter and is 04:23:10
21 attached hereto.)
22 MR. SRINIVASAN: And Exhibit 98 is a
23 two-page email chain. The originating email is
24 from Hector Sanchez to various people, including
25 Mr. Kreiner. It was sent on September 9th, 2019, 04:23:42

Page 268

HIGHLY CONFIDENTIAL

1 with the subject line "Epic Key sales." 04:23:46

2 Q. (By Mr. Srinivasan) Mr. Kreiner, do you

3 remember this email chain?

4 A. Not really, but it was definitely sent to

5 me. 04:24:02

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Page 269

Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)**Deposition Designation of Haseeb Malik
(February 12, 2021)****Time**

Apple Inc.'s Designations (Yellow Highlight)	Epic Games, Inc.'s Designations (Blue Highlight)
9 minutes 14 seconds	1 minute 31 seconds

DEFENDANT A	United States District Court Northern District of California
	Case No. 4:20-cv-05640-YGR
	Case Title <i>Epic Games, Inc. v. Apple, Inc.</i>
	Exhibit No. Depo. 3
	Date Entered _____
	Susan Y. Soong, Clerk
By: _____	Deputy Clerk

** HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER **

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Δ DEFENDANT Δ	United States District Court Northern District of California	
	Case No.	4:20-cv-05640-YGR
	Case Title	<i>Epic Games, Inc. v. Apple, Inc.</i>
	Exhibit No.	Depo. 3
	Date Entered	
By: _____, Deputy Clerk		

_____) Case No. 4:11-cv-06715YGR
IN RE APPLE iPHONE TRUST) 4:11-cv-06714-YGR and
LITIGATION) 4:19-cv-03074-YGR
_____)

** HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER **

REMOTE VIDEOTAPED DEPOSITION OF HASEEB MALIK

Friday, February 12, 2021

Volume I

Reported by:

NADIA NEWHART

CSR No. 8714

Job No. 4453673

PAGES 1 - 198

Page 1

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While you were at Epic Games, what was your
position?

09:22:04

A Director of mobile publishing.

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2 (Exhibit 506 was marked for identification
3 and is attached hereto.)

4 BY MR. DOREN:

5 Q And, Mr. Malik, the next exhibit will be 10:56:37
6 Exhibit 506. It's a multipage document bearing
7 Bates numbers EPIC_00407322 through 332. And it is
8 a series of -- it looks like a text string between
9 you and Mr. Payne on -- from Saturday, August 3,
10 2019. 10:57:06

11 Just wait for that to come up, and please
12 take the time you need to review it.

13 MS. MOSKOWITZ: It's not a text chain. I
14 think this would have been a Hangouts in the
15 production format. 10:57:19

16 MR. DOREN: Thank you.

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First of all, Mr. Malik, do you -- have you
had a chance to review Exhibit 506?

A Yeah, for the -- yeah, I -- I tried to go
through the 11 pages as quick as I could.

11:02:48

Q Yeah. And to the extent you need more time
with the document along the way, you just tell me.

Now, do you recognize this as a Hangout
exchange between yourself and Mr. Payne from
August 2019?

11:03:06

A Yes.

Q And what is a Hangout?

A It's Google's chat client.

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15 Q And your next entry -- entry says (as read): 11:11:46

16 "And for God's sake, why do we hate

17 Apple?"

18 And that was a question you had on August 3,

19 2019, correct?

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21 THE WITNESS: I -- yeah. As you can tell by

22 my tonality in this conversation, I appear quite

23 frustrated as a new employee not being able to

24 figure out how to effectively do my job. And so I

25 am wondering why we are struggling with the 11:12:22

1 platforms I'm supposed to work on.

2 BY MR. DOREN:

3 Q And your perception at the time was that Epic
4 hated Apple, correct?

5 A The language I'm using here is me trying to 11:12:32
6 figure out why the relationship is not the same as
7 what I'm used to at other companies.

8 Q With Apple?

9 A With -- with Apple, uh-huh.

10 Q And what you wrote was (as read): 11:12:44
11 "And for God's sake, why do we hate
12 Apple," correct?

13 A That's what I wrote.

14 Q And that was the question you had as of that
15 date, correct? 11:12:56

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24 A Yeah. So look, I -- so as I mentioned, I was

25 having a pretty tough time at this period of being 11:13:09

1 there for a few months and not understanding why we
2 were having some of the challenges we were having
3 with mobile coming -- that I am coming from a -- a
4 pretty strong mobile background, and this felt
5 different to me for the world's largest game. 11:13:27

6 Q And -- and what challenges did you believe
7 that the company was having with mobile after --
8 once you had been at the company for three months?

9 A So the Android ones which were, as I
10 mentioned, numerous steps imposed by the operating 11:13:39
11 system to -- to scale the game -- so you have to
12 remember, if my -- if my job performance is -- is
13 based on growing the mobile -- mobile users but I'm
14 running into these hurdles, it's quite frustrating.

15 And then regarding Apple, by this time, I've 11:13:58
16 already encountered a number of delays and so on in
17 the review process. And so I am trying to figure
18 out through talking to this colleague on why we're
19 having all of these delays through the review
20 process and -- and so on with Apple. 11:14:12

21 Q And what review process are you talking
22 about?

23 A So sometimes it takes a long time to get a --
24 a Fortnite build -- or it took a long time to get a
25 Fortnite build through the review process at Apple 11:14:26

1 relative to the speed in which the same builds would
2 go through on the other platforms.

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Q And if you go down further at 8- -- or sorry,

13:58:21, Mr. Payne says (as read):

"I don't have the impression that

our relationship is regularly

11:34:19

antagonistic. Epic has been

on-stage in several big Apple

presentations in the last couple of

years."

Do you see that?

11:34:27

A Uh-huh, yes, I see that.

Q And you -- and you understand that to mean

that Epic had made -- created opportunities for Epic

to present at Apple events, correct?

A From my understanding, the company had been

11:34:41

invited to share games in the past on -- at

worldwide developer conference. So that's where I

was -- this is all sort of coming from, and it -- it

should be better than the way it is.

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20 Q Hi, Mr. Malik. We are preparing the next 11:58:14

21 exhibit in order, which will be Exhibit 507, which

22 is a deck entitled "Fortnite Mobile Adam Sussman

23 Onboarding - January 2020."

24 And it -- it -- the first page bears your

25 name and Brian Chu's name. The document is Bates 11:58:39

1 numbers EPIC_00126433 through 487.

2 So once that comes up, take the time to

3 familiarize yourself with it, but to the extent I

4 have specific questions, I will direct you to the --

5 the places that I have questions about.

11:59:01

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10 (Exhibit 507 was marked for identification

11:59:15

11 and is attached hereto.)

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Q Mr. Malik, have you had an opportunity to
review Exhibit 507?

A Yes. 12:02:49

Q And this document is entitled "Adam Sussman
Onboarding - January 2020."

Do you recall this document?

A Yes, I -- I do.

Q And what is it? 12:03:02

A This was a collection of slides that
leadership asked us to pull together to be shared
with Adam Sussman when he joined the company.

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(Exhibit 508 was marked for identification
and is attached hereto.)

12:31:27

BY MR. DOREN:

Q Mr. Malik, you were presented with
Exhibit 508, which is a document bearing Bates
numbers EPIC_00385868 through 902.

It begins with an email from you to
Devin Winterbottom with attachments, "Mobile
Business Update - March 2020," and it does indeed
include or is followed by a deck entitled "Mobile
Business Update - March 2020."

12:31:41

Can you please just take a moment to
familiarize yourself with this document. And as
with the last deck, I will point you to specific
areas of interest.

12:32:05

A Okay.

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Q And have you had an opportunity to review

Exhibit 508?

A Yes. This looks like the mobile business --

Q Let me ask, let me ask, let me ask.

And do you recognize this document?

12:33:35

A Yes, I recognize this document.

Q And what is it?

A This is the mobile business update dated

March 2020.

Q And what was -- why was this document

12:33:46

created?

A As far as I recall, I believe this was to be

presented to (technical difficulty.)

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A I believe this presentation was put together
to be presented to Adam Sussman.

Q And who prepared this -- this presentation? 12:34:24

A All of the people on that -- on -- which was
the mobile team at Epic. So you're number 5870, all
the people on this slide participated in putting
this presentation together.

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12 (Exhibit 510 was marked for identification

13 and is attached hereto.)

14 BY MR. DOREN:

15 Q Mr. Malik, you have in front of you 12:44:56

16 Exhibit 510, which is a three-page document bearing

17 Bates numbers EPIC_00428883 through 885.

18 If you could please take a moment to review

19 this email string.

20 A Okay. 12:45:51

21 Q Mr. Malik, is this an email string from

22 September 2019 that -- in -- in which you are

23 included regarding scoping Fortnite build for Google

24 Play?

25 A Yes. 12:46:08

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18 Q And who was the source of that information to

19 you?

20 A So again, like I had mentioned before, 01:52:41

21 these -- me carrying out these things was under the

22 direction of Epic leadership and the people that

23 were above me. So Ed Zobrist, Matt Weissinger and

24 so on.

25 Q You were just following orders? 01:53:00

1 A Just following orders.

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11 (Exhibit 511 was marked for identification

12 and is attached hereto.)

13 BY MR. DOREN:

14 Q Exhibit 511 is another email string. It

15 begins on EPIC_00431657 to 659. And the top email 01:53:30

16 on the first page of Exhibit 511 is from

17 Adam Sussman to you, dated Friday the 24th of

18 January of 2020.

19 Can you please take a moment, please, and

20 review Exhibit 511. 01:53:50

21 A Okay.

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22 Q Okay. Then on January 23rd, at 1:48 p.m.,
23 you send this string -- you forward this string to
24 Adam Sussman, correct?

25 A Yes. I was asked to catch Adam up on all 01:58:11

1 things mobile, and so I started forwarding different
2 emails. This was one of them.

3 Q Okay. And you tell him that (as read):

4 "For background, we had submitted a
5 build of Google Play that included 01:58:25
6 Epic payment only," correct?

7 A Yes, that is what I wrote there, uh-huh.

8 Q And that was an accurate statement?

9 A Yes.

10 Q And then you say (as read): 01:58:38

11 "Initially, we were flagged for two
12 violations. One was for appearing
13 to direct players to our sideload
14 experience on web and the second for
15 not including Google Play payment 01:58:45
16 services. We submitted a second
17 build which was cleared of the 1st
18 violation but still blocked due to
19 violation of their payment policy.
20 This is where we stand now." 01:58:56

21 And that's an accurate statement as of
22 January 23rd, 2020?

23 A Yes. I summarize what had happened in a few
24 short paragraphs for the new executives to join.

25

Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)**Deposition Designation of Mark Rein
(February 10, 2021)****Time**

Apple Inc.'s Designations (Yellow Highlight)	Epic Games, Inc.'s Designations (Blue Highlight)
14 minutes 53 seconds	19 seconds

DEFENDANT A	United States District Court Northern District of California
	Case No. 4:20-cv-05640-YGR
	Case Title <u>Epic Games, Inc. v. Apple, Inc.</u>
	Exhibit No. Depo. 6
	Date Entered _____
	Susan Y. Soong, Clerk
By: _____	Deputy Clerk

HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

EPIC GAMES, INC.,
 Plaintiff,
 Counter-defendant,

vs.

Case No. 4:20-cv-05640
 YGR

APPLE INC.,
 Defendant,
 Counterclaimant.

IN RE APPLE IPHONE
 ANTITRUST LITIGATION

Case No. 4:11-cv-06714
 YGR

(caption cont'd)

DEFENDANT	United States District Court Northern District of California	
	Case No.	4:20-cv-05640-YGR
	Case Title	<i>Epic Games, Inc. v. Apple, Inc.</i>
	Exhibit No.	Depo. 6
	Date Entered	
By: Susan Y. Soong, Clerk		
		Deputy Clerk

****HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER****

DONALD R. CAMERON, et al.,

Plaintiffs,

vs.

Case No. 4:19-cv-03074

YGR

APPLE INC.,

Defendant.

****HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER****

ZOOM DEPOSITION OF MARK REIN

(Reported Remotely via Video & Web Videoconference)

Ocala, Florida Deponent's location)

Wednesday, February 10, 2021

Volume I

STENOGRAPHICALLY REPORTED BY:

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20 Q. When did you join Epic Games, sir? 09:15:46

21 A. Around early 1992.

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25 Q. And you've been with the company ever 09:16:04

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since?

09:16:06

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A.

Yes.

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23 Q. And are the things that you are involved
24 in today still in the arena of sales and marketing
25 and sales and marketing strategy?

09:18:55

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A. Typically, yes.

09:18:57

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And do you currently sit on the board of

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directors for Epic?

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A. Yes.

09:19:21

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Q. And how long have you been on the board?

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A. Since we created the board.

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And in the course of your
responsibilities or your job function, have you had
dealings with Apple?

A. Yes.

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22 Q. Well, while Fortnite was on the

23 App Store, did Apple offer marketing and

24 promotional support for it?

25 A. Yes.

09:51:51

1 Q. Okay. And what sort of marketing and 09:51:51

2 promotional support did Apple provide?

3 A. Apple would feature your app occasionally

4 when you had something important going on.

5 Q. You mean -- 09:52:08

6 A. Sorry. Apple would feature Fortnite

7 occasionally when we had something important going

8 on.

9 Q. And what does that mean in the context of
10 an App Store to feature it? 09:52:15

11 A. It means they would give it a prominent
12 placement on one of the pages of the App Store.

13

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16 Q. What other sorts of promotion and

17 marketing did Apple provide for Fortnite?

18 A. One time they put us up on stage and they

19 demonstrated Fortnite at one of their -- I can't

20 remember if it was a developer conference or a 09:52:54

21 product launch.

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Q. Did Apple and Epic collaborate

effectively on the marketing and promotional

efforts that you do recall?

A. I think so.

09:53:43

Q. And did the marketing and promotion

provided by Apple benefit Epic?

A. I -- I think it did.

Q. How?

A. Through more people being aware of the

09:54:00

game.

Q. No matter which platform they ultimately

played it on?

A. Well, the marketing would have been

targeted at iOS users.

09:54:14

Q. One of the significant elements of

Fortnite is cross-platform play, correct?

A. Yes.

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23 (Exhibit 188 was marked for

24 identification by the court reporter and is

25 attached hereto.)

09:56:03

1 Q. (By Mr. Doren) Mr. Rein, while you 09:56:08
2 review that, I will describe for the record that
3 this Exhibit 188 is a two-page document which
4 contains an email string, and the first page of the
5 exhibit is EPIC_00010165. 09:56:18

6 Please take a moment and review that
7 document.

8 THE DEPONENT: Yup. I've reviewed it.

9 Q. (By Mr. Doren) Thank you very much, sir.
10 First of all, do you recognize this as an 09:57:02
11 email chain in which you participated including
12 various Epic colleagues on January -- from
13 January 17th, 2018?

14 A. Yes.

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Q. In 2019 Epic hosted a virtual concert
with the DJ named Marshmello, correct?

A. I believe it was in 2019, yes. 10:18:54

Q. But you recall the event, correct?

A. I recall the event. I don't recall the
exact date.

Q. Thank you.

And can you describe what the event was, 10:19:02
please.

A. The Marshmello concert was an in-game
event where we had the Marshmello character doing a
show and to Marshmello music.

Q. And for those of us that aren't quite as 10:19:20
hip as others, what is Marshmello? Or who is
Marshmello?

A. He's a famous DJ artist.

Q. And did Epic consider this to be a major
event? 10:19:36

1 A. Yes, I believe we did. 10:19:38

2 Q. And when you say it was "an in-game

3 experience," was it within Fortnite?

4 A. It was within Fortnite.

5 Q. And was it available on all platforms? 10:19:47

6 A. Yes, I believe it was.

7 Q. Meaning mobile and consoles and PCs?

8 A. Yes, whatever -- within Fortnite.

9 Wherever you played it.

10 Q. Was it available on the web-based 10:20:07

11 versions of Fortnite?

12 A. What web-based versions of Fortnite?

13 Q. Those available, for example, through

14 GeForce?

15 A. It should have been, yes. 10:20:22

16 Q. Thank you.

17 And did viewers purchase tickets to

18 attend that event?

19 A. No.

20 Q. It was free? 10:20:30

21 A. It was a free event.

22 Q. And did Apple offer marketing support for

23 the Marshmello event?

24 A. I believe they did.

25 Q. And do you recall what it was? 10:20:47

1 A. I believe they did some sort of featuring 10:20:52

2 on the store.

3 Q. And when you say featuring on the store,

4 what do you mean?

5 A. I think they wrote a story about it or 10:21:01

6 placed a Fortnite imagery in -- in -- in a featured

7 location on App Store.

8 Q. And do you recall any other marketing or

9 promotion that Apple did with Epic around the

10 event? 10:21:19

11 A. Apple Music did some advertising, some

12 outdoor advertising, I believe.

13 Q. Do you recall?

14 A. And featured -- and featured music from

15 the event in Apple Music. 10:21:32

16 Q. And did you consider that to be a benefit

17 to Epic's profile?

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20 THE DEPONENT: I -- it helped get more 10:21:49

21 people to listen to the music that was from the

22 Fortnite Marshmello concert, perhaps.

23 Q. (By Mr. Doren) And do you consider that

24 to be a good thing?

25 A. If you like that kind of music, it's a 10:22:02

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good thing, yes.

10:22:04

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12 Exhibit 190 is a multipage email string,

13 the first page of which begins with an email from

14 Edward Zobrist to you and others sent on

15 January 30th, 2019. The document bears numbers 10:44:09

16 EPIC_00193236 through 40.

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22 Q. Mr. Rein, have you had an opportunity to

23 review Exhibit 190?

24 A. Yes.

25 Q. And do you recognize it as an email chain 10:47:57

1 among various Epic employees, including yourself, 10:48:01

2 from January of 2019?

3 A. Yes.

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You then go on and state: "With 11:02:07
controller support and if Apple gets behind
promoting that, we could see huge growth on iOS."

Do you see that?

A. Yes. I wrote that.

Q. What did you mean by that statement? 11:02:18

A. I think I mean what it said. With
control and support and if Apple gets behind
promoting, we could see huge growth on iOS.

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And you mentioned that -- and why is it a

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good thing to have Apple advertise your product?

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A. Any -- almost any advertising for your

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product is a good thing.

11:08:18

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Q. And Apple is a -- a well-known brand?

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A. Yes.

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Q. And a highly regarded brand?

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A. Yes.

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Q. And being affiliated with Apple is

11:08:28

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beneficial to Epic?

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A. I believe it's beneficial to Fortnite

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when they are marketing Fortnite.

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MR. DOREN:

Sarah, let's, please, look at

11:26:55

Page 100

1 Tab 34, which is a document previously marked as 11:26:56

2 Exhibit 35.

3 THE DEPONENT: I'm looking at it.

4 Q. (By Mr. Doren) Great.

5 And, Mr. Rein, we will be talking about 11:27:35

6 the last paragraph in your email on page 1, and I'm

7 going to be asking you some questions about the

8 deck attached that relates to Project Storm. But

9 look at as much as the document as you need to and

10 if in the course of our discussion you feel to need 11:27:56

11 to look at it further, you may do so.

12 A. I looked through it.

13 Q. Thank you.

14 Mr. Rein, Exhibit 35 begins with an email

15 from you to Daniel Vogel with copies to various 11:32:09

16 Epic Games personnel. There's then a string of

17 emails, and the document ends with what appears to

18 be a deck entitled "Project Storm" dated

19 March 2019, and the document bears Bates numbers

20 EPIC_89876 through 889. 11:32:27

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Q. (By Mr. Doren) The first page of the
exhibit begins with an April 15th, 2019, email from
Mr. Rein.

Mr. Rein, you've had an opportunity to
review Exhibit 35?

11:33:06

A. Yes.

Q. Do you remember the deck related to
Project Storm that is part of Exhibit 35?

11:33:16

A. I remember meeting with Walmart and them
giving the deck, and this looks like it.

Q. And what was Project Storm?

A. It was a -- Walmart's proposed cloud
gaming service.

11:33:36

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Q. We've discussed earlier GeForce as -- as
a web -- as a source for a web-accessible version
of Fortnite, correct?

11:34:16

A. GeForce is a cloud streaming service that
has Fortnite on it.

Q. And --

A. Or does now. Sorry.

Q. Thank you.

11:34:27

And we have in front of us documents
discussing an initiative at Walmart called Project
Storm back in April 2019, correct?

A. Yes.

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Q. Is that a trend in gaming, the
cloud-based streaming?

11:35:47

A. I don't know if I'd say it's a trend.
There are companies attempting to do it.

Q. Do you consider that to be the future of
gaming?

A. Not really.

11:36:02

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2 Q. Are you in negotiations with Amazon on
3 its cloud-based service?

4 A. We're talking to them about it.

5 Q. What is the status -- what's the status 11:36:45
6 of those negotiations?

7 A. We're still in discussions.

8 Q. Has Epic provided a version of Fortnite
9 to Amazon for testing?

10 A. Well, Amazon's cloud service runs -- can 11:37:00
11 run anything that's on the Epic Games Store, so
12 they don't -- we don't need to provide it to them.
13 They're able to do it. But we have been working
14 with them.

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4 Q. (By Mr. Doren) Looking, please, at the

5 first page of Exhibit 35. And in the third 11:38:59

6 paragraph, you state: "I played Walmart's demo on

7 an Android phone with an Xbox controller."

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23 Q. (By Mr. Doren) It was -- it was what

24 they had to offer as -- as of April 15 as their

25 streaming service for you to try out; is that fair? 11:40:04

1 A. What I played in our office that date. 11:40:07

2 Q. And you played Walmart's demo on an
3 Android phone with an Xbox controller, and the
4 experience felt like playing on PS4 and superior to
5 playing on Android or iOS. 11:40:22

6 Do you recall that experience?

7 A. Vaguely.

8 Q. And do you recall believing that it felt
9 like playing on PS4?

10 A. That's what I said in this email. 11:40:35

11 Q. And what about the experience made
12 playing on the Android phone with an Xbox
13 controller feel like playing on a PlayStation 4?

14 A. I just remember it felt very solid, and
15 it was the -- the graphics were very high 11:40:52
16 resolution and all the -- the details were PC-like
17 and felt like being on a more powerful platform
18 than a mobile platform.

19 Q. And then you go on to say it felt
20 superior to playing on Android or iOS. 11:41:06

21 And what did you mean by that?

22 A. I -- I just answered that.

23 Q. Okay. It felt like you were playing on
24 something more powerful than a mobile platform?

25 A. It felt like I was playing on a PC or 11:41:19

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PlayStation 4.

11:41:22

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4 Q. Do you know what factors went into

5 setting the 12 percent commission level?

11:42:45

6 A. Yes.

7 Q. What do you know about that?

8 A. The -- the cost of operating the service

9 went into -- was one of the factors in deciding

10 what was a fair amount to charge.

11:43:05

11 Q. And when you say cost of operating the

12 service, what service are you referring to?

13 A. The service of -- that we provide to --

14 to games that are sold in the Epic Games Store.

15 Q. You mean the payment processing service

11:43:22

16 or do you mean something more than that?

17 A. I'm -- payment processing would be one of

18 the costs.

19 Q. What other costs went into it?

20 A. Some of the others could be the -- the

11:43:36

21 actual distribution cost, the internet bandwidth

22 cost, the -- you know, the -- the cost of

23 maintaining it.

24 Q. Maintaining the store?

25 A. Yes.

11:43:54

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22 (Exhibit 198 was marked for

23 identification by the court reporter and is

24 attached hereto.)

25 Q (By Mr. Doren) Mr. Rein, you are

12:23:32

1 presented with Exhibit 198, which is a three-page 12:23:35
2 document which contains an email chain. The first
3 email on the document at the top of the first page
4 is dated March 14th, 2018 from Canon Pence to
5 Daniel Vogel, with cc's to others, including 12:23:59
6 yourself. The document bears Bates
7 No. EPIC_01919888, et cetera.

8 Please take a moment and review this
9 document.

10 A. Okay. I reviewed it. 12:24:57

11 Q. Mr. Rein, you had an opportunity to
12 review Exhibit 198?

13 A. Yes.

14 Q. And is this an email string that you
15 received on March 14th, 2018 from Mr. Pence? 12:25:05

16 A. It appears to be, yes.

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